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IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

KARL GRANT LOSEE,

Plaintiff,

v.

RICHARD GARDEN, et al.,

Defendants.

Case No. 2:07-CV-911

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

District Judge Dee Benson

Magistrate Brooke C. Wells

Pursuant to Rule 56-1(b) of the Federal Rules of Civil Procedure, Defendants Sidney Roberts, M.D., Richard Garden, M.D. and Kennon Tubbs, M.D, file this motion for summary judgment seeking dismissal, with prejudice, of Plaintiff's civil rights lawsuit against them.

The grounds for Defendants' motion are that Defendants are entitled to qualified immunity because Plaintiff cannot show their conduct violated the Eighth Amendment by allegedly failing to provide proper medical care.

The undisputed facts show: (1) Dr. Tubbs had no involvement in Losee's care, other than prescribing his dose of insulin and ordering screening tests when Losee was first admitted to the prison; (2) Dr. Roberts appropriately treated Plaintiff's diabetes, including implementing the University of Utah Diabetes Clinic recommendations, and he promptly and appropriately treated Losee's elevated potassium levels; (3) Dr. Garden likewise made medical and administrative decisions in Losee's care designed to implement the University of Utah recommendations, and never was involved in the potassium treatment. Based on the undisputed facts, Plaintiff's claims that Defendants failed to implement the University's recommendations and failed to properly treat his potassium imbalance fail as a matter of law.

Defendants' motion for summary judgment is supported by a memorandum of authorities, filed concurrently, and by Defendants' *Martinez* report (Docket No. 60.)

DATED this 10th day of August, 2009.

MARK L. SHURTLEFF
Utah Attorney General

/s/ Joni J. Jones
JONI J. JONES
Assistant Utah Attorney General
Attorney for Defendants

CERTIFICATE OF MAILING

I certify that on August 10, 2009, I electronically filed the foregoing, **MOTION FOR SUMMARY JUDGMENT** using the Court's CM/ECF system and I also certify that a true and correct copy of the foregoing was sent by United States mail, postage prepaid, on August 11, 2009, to the following:

Karl Grant Losee
USP 41156
Utah State Prison
P.O. Box 250
Draper, UT 84020

_____/s/ Joni J. Jones